

### §617.13

the particular program found to be in violation of the Act. NSF will not base any part of a termination or refusal on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance for NSF.

(d) NSF will not begin any hearing under paragraph (a) until the Director has advised the recipient of its failure to comply with this part and has determined that voluntary compliance cannot be obtained.

(e) NSF will not terminate or refuse to grant Federal financial assistance until thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Director will file a report whenever any action is taken under paragraph (f) of this section.

(f) *Alternate Funds Disbursal Procedures.* (1) When NSF withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(2) The Director will require any alternate recipient to demonstrate:

(i) The ability to comply with these regulations; and

(ii) The ability to achieve the goals of the Federal statute authorizing the program or activity.

### §617.13 Hearings, decisions, post-termination proceedings.

Procedures prescribed in 45 CFR 611.9 and 611.10 for NSF enforcement of Title VI of the Civil Rights Act of 1964 shall apply also for NSF enforcement of this part. At the conclusion of any action taken under §617.12, NSF, shall remind both parties of the right to judicial review established by 42 U.S.C. 6105.

### §617.14 Remedial action by recipients.

Where the Director finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action the Director may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has dis-

### 45 CFR Ch. VI (10–1–02 Edition)

criminated, the Director may require both recipients to take remedial action.

### §617.15 Exhaustion of administrative remedies.

(a) A complainant may file a civil action after exhausting administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed a sufficient complaint and NSF has made no finding with regard to the complaint; or

(2) NSF issues any finding in favor of the recipient.

(b) If NSF fails to make a finding within 180 days or issues a finding in favor of the recipient, NSF will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief under 42 U.S.C. 6104; and

(3) Inform the complainant that under 42 U.S.C. 6104:

(i) The complainant may bring a civil action only in a United States District court for the district in which the recipient is located or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) The notice must state the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

### §617.16 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against a person who:

## National Science Foundation

## § 618.100

(a) Attempts to assert a right protected by the Act, or

(b) Cooperates in any mediation, investigation, hearing or other part of NSF's investigation, conciliation, and enforcement process.

### APPENDIX I TO PART 617—LIST OF AGE DISTINCTIONS PROVIDED IN FEDERAL STATUTES OR REGULATIONS AFFECTING FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY NSF

I. Section 6 of Pub. L. 94-86, 42 U.S.C. 1881a:

This statute authorizes the Foundation to establish the Alan T. Waterman Award to recognize and encourage the work of "younger" scientists. Under NSF procedures awards have been limited to persons 35 years of age or under.

## PART 618—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Subpart A—Introduction

Sec.

- 618.100 Purpose and effective date.
- 618.105 Definitions.
- 618.110 Remedial and affirmative action and self-evaluation.
- 618.115 Assurance required.
- 618.120 Transfers of property.
- 618.125 Effect of other requirements.
- 618.130 Effect of employment opportunities.
- 618.135 Designation of responsible employee and adoption of grievance procedures.
- 618.140 Dissemination of policy.

### Subpart B—Coverage

- 618.200 Application.
- 618.205 Educational institutions and other entities controlled by religious organizations.
- 618.210 Military and merchant marine educational institutions.
- 618.215 Membership practices of certain organizations.
- 618.220 Admissions.
- 618.225 Educational institutions eligible to submit transition plans.
- 618.230 Transition plans.
- 618.235 Statutory amendments.

### Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

- 618.300 Admission.
- 618.305 Preference in admission.

- 618.310 Recruitment.

### Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

- 618.400 Education programs or activities.
- 618.405 Housing.
- 618.410 Comparable facilities.
- 618.415 Access to course offerings.
- 618.420 Access to schools operated by LEAs.
- 618.425 Counseling and use of appraisal and counseling materials.
- 618.430 Financial assistance.
- 618.435 Employment assistance to students.
- 618.440 Health and insurance benefits and services.
- 618.445 Marital or parental status.
- 618.450 Athletics.
- 618.455 Textbooks and curricular material.

### Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

- 618.500 Employment.
- 618.505 Employment criteria.
- 618.510 Recruitment.
- 618.515 Compensation.
- 618.520 Job classification and structure.
- 618.525 Fringe benefits.
- 618.530 Marital or parental status.
- 618.535 Effect of state or local law or other requirements.
- 618.540 Advertising.
- 618.545 Pre-employment inquiries.
- 618.550 Sex as a bona fide occupational qualification.

### Subpart F—Procedures

- 618.600 Notice of covered programs.
- 618.605 Enforcement procedures.

AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52893, Aug. 30, 2000, unless otherwise noted.

### Subpart A—Introduction

#### § 618.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in